

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 TERRY LYNN HAWKINS,
12
13 v. Petitioner,
14 MATTHEW CATE, Secretary,
15 Respondent.

Civil No. 08-0678 J (PCL)

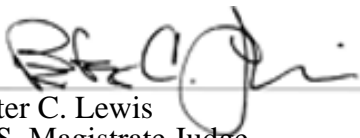
**ORDER SUA SPONTE SUBSTITUTING
RESPONDENT**

16
17 Petitioner, a state prisoner, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.
18 § 2254. It has come to the Court's attention that Matthew Cate has recently been appointed Secretary
19 of the Department of Corrections and Rehabilitation.

20 A writ of habeas corpus acts upon the custodian of the state prisoner. *See* 28 U.S.C. § 2242;
21 Rule 2(a), 28 U.S.C. foll. § 2254. Because the Secretary of the Department of Corrections and
22 Rehabilitation has changed, so has Petitioner's custodian. Accordingly, in order to conform with the
23 requirements of Rule 2(a) of the Rules Governing § 2254 Cases, the Court hereby sua sponte **ORDERS**
24 the substitution of Matthew Cate, Secretary of the California Department of Corrections and
25 Rehabilitation, as Respondent. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (stating
26 that the respondent in § 2254 proceedings may be the chief officer in charge of state penal institutions);
27 *see also* FED. R. CIV. P. 25(d)(1) ("When a public official is a party to an action in his official capacity
28 and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and

1 the officer's successor is automatically substituted as a party.") The Clerk of the Court shall modify the
2 docket to reflect "Matthew Cate, Secretary" in place of the former respondent.

3 DATED: June 5, 2008

4 
5 Peter C. Lewis
6 U.S. Magistrate Judge
7 United States District Court
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28